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KENT et al. v. KENT et al.

Nov. 22, 1906.

[55 S. E. 564.]

Wills—Construction—Lapsed Gift—Intestate Property.—Code 1887, § 2521 [Va. Code 1904, p. 1289], declares that a will shall be construed with reference to the real and personal estate, to take effect as if it had been executed immediately before the testator's death. Section 2524 [Va. Code 1904, p. 1290] provides that, unless a contrary intention shall appear by the will, the real estate devised thereby which shall fail shall be included in the residuary devise. A testator gave the residue of his real and personal property to three children named. One of the three died intestate without issue before testator's death. Held, that the devise to him lapsed, and as to his interest in the residue the testator died intestate, the object of section 2521 being to make wills speak, with respect to real estate, as they did under the common law with respect to personalty, as of the death of the testator, and section 2524 placing real and personal estate on the same footing in respect to lapsed devises and legacies.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 49, Wills, §§ 2173-2183.]

Same—Designation of Devisees—Gift to Classes or Individuals.—

A testator's wife of the residue of his real and personal property to three children named, children of his first marriage, is not a gift to them as a class, but to them as individuals, and on the death of one of them without issue before the death of the testator the gift to him lapsed.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 49, Wills, § 1115.]